IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 30TH NOVEMBER 2006 / 9TH AGRAHAYANA 1928

WP(C).No. 31837 of 2006(M)

C.C.NO.2570 OF 2006 OF III METROPOLITAN MAGISTRATE, CHENNAI

PETITIONERS:

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1. D.PRADEEP KUMAR, S/O.BASKARAN PILLAI,
   AGED 38 YEARS, RESIDING AT JAYA MANDIRAM,
   KOTTATHALA P.O., KOTTARAKKARA, KOLLAM DISTRICT.

2. P.ABRAHAM, S/O.PAPPACHAN,
   AGED 48 YEARS, RESIDING AT SHINY BHAVAN,
   PUTHOOR, CHERUMANGAD P.O., KOLLAM DISTRICT.

BY ADV. SRI.T.MADHU
SMT.C.R.SARADAMANI

RESPONDENTS:

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1. S.NEMICHAND,
   PROPRIETOR OF M/S.DILIP FINANCE,
   NO.1, KANDAPPA MUDALI STREET, SOW CARPET,
   CHENNAI-17.

2. THE STATION HOUSE OFFICER,
   KOTTARAKKARA POLICE STATION,
   KOTTARAKKARA, KOLLAM DISTRICT.

BY GOVERNMENT PLEADER SRI.K.A.AKBAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R.BASANT, J.

W.P.C.NO.31837 OF 2006

Dated this the 30th day of November, 2006.

JUDGMENT

The petitioners are accused in a prosecution under Section 138 of the N.I Act before a court at Chennai, within the jurisdiction of Tamil Nadu High Court. It is submitted that warrants of arrest have been issued to the petitioners by that court in Chennai. The petitioners want this Court to invoke the constitutional jurisdiction under Article 226 and/or 227 of the Constitution of India and quash the proceedings before the Chennai Court.

2. After discussions at the Bar, the prayer is toned down and the only prayer now made is that the petitioners may be given reasonable time to appear before the court at Chennai and may not be subjected to the trauma of arrest and transportation in custody to the Chennai court.

3. Even though I am not persuaded to invoke the constitutional jurisdiction to interfere with the cognizance taken by the Chennai court, I am satisfied that appropriate directions under Section 438 Cr.P.C can be issued in favour of the petitioners to ensure in the interests of justice that they are not arrested and transported in custody to the Chennai court. Appropriate conditions can be imposed.

4. In the result, this Writ Petition is allowed in part. The following directions are issued:

i) The petitioners shall appear before the Chief Judicial Magistrate, Kollam at 11 a.m on 4.12.2006;

ii) They shall execute bonds for Rs.25,000/- with two solvent sureties to the satisfaction of the learned Chief Judicial Magistrate, Kollam undertaking to appear before the III Metropolitan Magistrate at Chennai at 11 a.m on 11.12.2006;

iii) They shall abide by further orders that will be issued by the learned Magistrate at Chennai thereafter;

iv) If the petitioners were arrested in pursuance of warrants of arrest issued by the learned Magistrate in C.C.No.2570 of 2006 prior to 04.12.2006, they shall be released on their executing a bond undertaking to appear before the learned Chief Judicial Magistrate, Kollam as directed in clause (i) above;

v) If the petitioners do not appear before the learned Chief Judicial Magistrate, Kollam as directed in clause (i) above and/do not appear before the learned Magistrate at Chennai on 11.12.2006, these directions shall, after the respective dates, lapse and the authorities shall be entitled to arrest the petitioners and deal with them in accordance with law.

vi) Compliance with the condition to appear before the Chennai court, shall be reported to the learned C.J.M, Kollam before 15.12.2006. If the conditions were not complied with, the learned C.J.M shall take steps against the petitioners and their sureties thereafter.

Hand over a copy of this order to the learned counsel for the petitioners today itself.

(**R.BASANT**, **JUDGE)**

rtr/